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2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

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6 MARIAN K. PORTER,

7 Plaintiff,

8 v.

9 SHYAM K. CHETAL, individually and d/b/a
10 ADVANTAGE REAL ESTATE PRO;
11 UNITED CAPITAL INVESTMENT, INC.
d/b/a NEVADA UNITED CAPITAL
12 INVESTMENTS, INC.; SMARTTOUCH
SYSTEMS, INC.; and DOES 1 through 30,
13 inclusive,

14 Defendants.

3:13-cv-00661-LRH-VPC

ORDER

15 Before the court is plaintiff Marian Porter’s motion for entry of judgment. ECF No. 100.
16 Defendants Shyam K. Chetal and United Capital Investments, Inc. (“United”) have failed to
17 respond.

18 **I. Background**

19 The parties are aware of the factual background of this case, which the court discussed in
20 its last order. *See* ECF No. 95. In August of 2014, Porter moved for summary judgment against
21 all defendants, which the court granted only on her breach-of-contract claim against Chetal and
22 United¹ but denied on all other claims. ECF Nos. 39, 44. After the court notified Porter that it
23 intended to dismiss this action for want of prosecution (ECF No. 93), she timely filed a motion to
24 voluntarily dismiss her remaining claims (ECF No. 94), which the court granted (ECF No. 95).
25 Because the court’s grant of partial summary judgment on Porter’s contract claim only addressed

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28 ¹ In its November 28, 2016 order, the court clarified that its grant of partial summary judgment applied to both Chetal and United, which the court ruled was Chetal’s alter ego. ECF No. 95.

1 liability and did not reach the issue of damages, the court ordered Porter, Chetal, and United to
 2 submit a proposed joint pretrial order on this sole remaining issue. ECF No. 95 at 5.

3 After none of the parties submitted the proposed order, the court ordered them to attend a
 4 telephonic status conference on February 8, 2017. ECF No. 97. Due to the fact that several court
 5 orders mailed to Chetal had been returned as undeliverable, the court also ordered plaintiff's
 6 counsel to make a good-faith attempt to ascertain the availability and address of Chetal and to
 7 provide him with a copy of the status-conference order. *Id.*

8 Neither Chetal nor any other representative for himself or United appeared at the status
 9 conference. ECF No. 99. The court therefore ordered Porter to move for entry of judgment no
 10 later than February 18, 2017, and to again make a good-faith attempt to locate Chetal and serve
 11 him with her motion. *Id.* The court set February 28, 2017, as the deadline for Chetal's reply. *Id.*

12 Porter timely filed the instant motion (ECF No. 100) and also filed a certificate of
 13 service, attesting to having served Chetal at his last known address (ECF No. 102). Chetal has
 14 failed to reply to Porter's motion.

15 **II. Discussion**

16 Porter has moved for entry of judgment pursuant to Federal Rule of Civil Procedure 54(a)
 17 and (b). After examining Porter's points and authorities and conducting its own research, the
 18 court has concluded that Rule 54 is an inappropriate procedural mechanism under these
 19 circumstances; the court never granted summary judgment on damages for the breach-of-contract
 20 claim, which, as stated in the court's last order, was the only remaining issue for trial. Therefore,
 21 the court cannot currently enter judgment on damages.

22 Instead, the court is giving defendants Chetal and United notice of its intent to *sua sponte*
 23 enter summary judgment in favor of Porter and against them. *See Fed. R. Civ. P. 56(f).* Chetal
 24 and Porter have 21 days from the date of this order to show cause as to why the court should not
 25 grant Porter summary judgment on damages on her breach-of-contract claim in the amount of
 26 two-hundred million dollars (\$200,000,000.00).

27 The court intends to enter summary judgment based on the following undisputed facts:

- 28 • The contract price for the mining rights at issue was \$220,000,000.00.

- As part of this contract, Chetal and United were to pay the Bureau of Land Management \$276,480.00 in licensing fees by September 3, 2013.
 - Chetal and United breached this contract when Chetal’s check for the licensing fees was rejected twice due to insufficient funds, resulting in Porter losing her mining rights.
 - Based on these facts, the court granted summary judgment against Chetal and United regarding liability for Porter’s breach-of-contract claim.
 - Chetal did not receive the \$220,000,000.00 contract price from Chetal or United.
 - Having lost her mineral rights due to Chetal’s breach of contract, Porter was unable to mitigate her damages by selling her rights to another party.
 - Porter is seeking \$200,000,000.00 in damages.²

III. Conclusion

IT IS THEREFORE ORDERED that plaintiff Marian Porter's motion for entry of judgment (ECF No. 100) is **DENIED**.

IT IS FURTHER ORDERED that, within 21 days of the date of this order, defendants Shyam Chetal and United Capital Investments, Inc., shall show cause as to why the court should not grant Porter summary judgment on damages on her breach-of-contract claim in the amount of two-hundred million dollars (\$200,000,000.00). If defendants respond, Porter may file a reply within 10 days of the response.

IT IS FURTHER ORDERED that the clerk of the court shall mail a copy of this order to Chetal;s last known address: 2090 Warmsprings Ct., Ste 180, Fremont, CA 94539.

IT IS SO ORDERED.

DATED this 1st day of March, 2017.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

² In her affidavit attached to her instant motion, Porter has asserted that the loss of her former mining rights has cost her “a loss of \$200,000,000.00.” ECF No. 100–1 at 3. Porter does not explain why she is seeking damages in an amount \$20 million less than the contract price. But because Porter is seeking a sum lower than the contract price, the court finds that this is not a dispute of material fact that would prevent entry of summary judgment.